

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 40

January 24, 1995, 4:54 p.m.
Page S-1421 Temp. Record

UNFUNDED MANDATES/Exemption for Radioactive Waste Mandates

SUBJECT: Unfunded Mandate Reform Act of 1995 . . . S. 1. Kempthorne motion to table the Bingaman amendment No. 192.

ACTION: MOTION TO TABLE AGREED TO, 57-40

SYNOPSIS: Pertinent votes on this legislation include Nos. 15-39, 41, 43-45, and 47-61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million.

The Bingaman amendment would exempt intergovernmental mandates regarding the treatment and disposal of radioactive waste from the funding requirement in this Act.

Debate was limited by unanimous consent. Following debate, Senator Kempthorne moved to table the Bingaman amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

Our colleagues raise two arguments in defense of their amendment. First, they say that nuclear waste issues are so important that the Federal Government should be free to impose unfunded intergovernmental mandates regarding nuclear waste without first giving Senators the opportunity to discuss and vote on whether they should be imposed without funding. On this point we simply have a difference of opinion. Nuclear waste disposal mandates often involve absolutely enormous costs. If Congress believes it has a right to impose those costs, then it should be willing to go on record as supporting a motion to waive the point of order that this bill will

(See other side)

YEAS (57)			NAYS (40)		NOT VOTING (3)	
Republicans (52 or 100%)	Democrats (5 or 11%)		Republicans (0 or 0%)	Democrats (40 or 89%)	Republicans (1)	Democrats (2)
Abraham	Hutchison	Bryan		Akaka	Inouye	
Ashcroft	Inhofe	Exon		Baucus	Johnston	
Bennett	Jeffords	Glenn		Biden	Kerrey	
Bond	Kassebaum	Kohl		Bingaman	Kerry	
Brown	Kempthorne	Nunn		Boxer	Lautenberg	
Burns	Kyl			Bradley	Leahy	
Chafee	Lott			Breaux	Levin	
Coats	Lugar			Bumpers	Lieberman	
Cochran	Mack			Byrd	Mikulski	
Cohen	McCain			Campbell	Moseley-Braun	
Coverdell	McConnell			Conrad	Moynihan	
Craig	Murkowski			Daschle	Murray	
D'Amato	Nickles			Dodd	Pell	
DeWine	Packwood			Dorgan	Pryor	
Dole	Pressler			Feingold	Reid	
Domenici	Roth			Feinstein	Robb	
Faircloth	Santorum			Ford	Rockefeller	
Frist	Shelby			Graham	Sarbanes	
Gorton	Smith			Harkin	Simon	
Gramm	Snowe			Hollings	Wellstone	
Grams	Specter					
Grassley	Stevens					
Gregg	Thomas					
Hatch	Thompson					
Hatfield	Thurmond					
Helms	Warner					

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

apply against unfunded intergovernmental mandates. All it takes to waive the point of order is a majority vote--if that cannot be mustered for a mandate, then it is pretty obvious to us that most Members do not think it is so important that the Federal Government should force the States to pay for it. We do envision some instances when Congress may impose an unfunded mandate. For example, we do not think Members would allow States to show a reckless disregard for the public safety by storing nuclear wastes in a manifestly unsafe manner. If such behavior were to occur, we believe that Members would be willing to order the States to use their own money to straighten up. The key point, though, is that Members should have to go on record as either being for or against imposing a mandate. Without this requirement, it is far too easy for Members to impose enormous mandates, including in the nuclear field, without considering the costs of their actions.

The second argument Senators have made in favor of this amendment is that it is unjust for this bill to allow the Nuclear Regulatory Commission (NRC) to impose unfunded, intergovernmental regulatory mandates (which it is permitted to do because it is an independent agency) and not to allow Congress to impose statutory mandates. We reject this argument for two reasons: first, the regulations the NRC promulgates are pursuant to existing statutory authority, and are not considered new mandates; and second, to the extent that the NRC actually does impose new mandates, "two wrongs do not make a right." If our colleagues believe the NRC is abusing its regulatory authority, we will be happy to examine ways in which to rein it in.

To a very large extent overzealous environmental laws and regulations, including on nuclear waste, have served as the impetus for offering this bill. We will not now provide an exemption for one of the types of mandates that made this bill necessary. We therefore support the motion to table the Bingaman amendment.

Those opposing the motion to table contended:

The treatment and disposal of nuclear waste is an issue of such enormous importance that Congress should not limit its ability to consider legislation regarding it. For us, the idea is absurd that Congress must automatically consider as out of order those bills that contain unfunded intergovernmental mandates on nuclear waste. In New Mexico, for example, there is an Indian tribe that is negotiating with utilities on the creation of a large nuclear waste repository. Under this bill, Congress will not be able to set standards for that facility unless it is willing to pay the costs. Though citizens in New Mexico and neighboring States may have concerns, they will not have a say through their Federal Government without Federal funding. The only way around this requirement is to vote to waive it. The second reason we believe this amendment should be passed is to bring it into parity with the NRC. Under S. 1, the unelected, independent bureaucrats at the NRC will have full authority to impose any unfunded mandates on State, local, and tribal governments that they please, but elected Members of Congress will be prohibited from taking similar actions. We regard this situation as fundamentally at odds with our principles of representative government. For us, these two reasons for supporting the Bingaman amendment are compelling, and we accordingly oppose the motion to table.